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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,143	09/09/2004	Harald Breivik	01702.403100.	9090

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EXAMINER	
DEES, NIKKI H	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
09/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/507,143	BREIVIK ET AL.	
	Examiner	Art Unit	
	Nikki H. Dees	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-17 and 21-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-17 and 21-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed June 30, 2008, has been entered. Claims 7-17 and 21-26 are currently pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Breivik et al. (WO 00/01249).

4. Breivik et al. teach a method of farm raising fish comprising feeding them food comprising by weight 25-70 % protein, 5-60 % lipids, 0-40 % carbohydrates and 0-15 % additional components (p. 3 lines 10-17, claim 9). The lipids in the food comprise fish oil that has been treated with urea (claim 10). The oil may be treated by heating with the urea, or by reacting the oil with a mixture of urea and water. In example 8, the oil is heated with urea and kept at 140°C for 20 minutes (Examples 5 and 8). These teachings anticipate Applicants' claims 7-10.

5. Breivik et al. teach that the urea is removed from the oil when the oil is pretreated (Example 7). They further teach that the urea may be added directly to the food (p. 3

lines 23-25). Additionally, the feed taught by Breivik et al. comprises antioxidants including tocopherol and ascorbic acid (Example 3). These teachings anticipate Applicants' claims 11-12 and 14.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 13, 15-17 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breivik et al. (WO 00/01249) with evidence provided by Food Day (Global Gourmet, March 7, 1997).

8. Breivik et al. teach a method for farming fish comprising feeding them a food as detailed above.

9. Breivik et al. are silent as to their method being used for fry, cod or halibut, and to the food not containing carotenoids.

10. One of ordinary skill in the art at the time the invention was made would have recognized that the carotenoids as taught in the invention of Breivik et al. were included for the purpose of imparting color to farmed salmonoids that in the wild obtain their distinctive flesh coloring from their diet. The artisan would recognize that cod and halibut are white-fleshed fish, as shown by Food Day, and therefore it would not be

desirable to include carotenoids in their diet. The omission of carotenoids from the food as taught by Breivik et al. would not have required undue experimentation on the part of the artisan. Additionally, given that the protein, lipid, carbohydrate and antioxidant content of the food would remain essentially the same as that of Breivik et al., one of ordinary skill would have a reasonable expectation that the food without the carotenoids would continue to serve as an acceptable diet for all of cod, halibut and fry.

Response to Arguments

11. Applicant's arguments filed June 30, 2008, have been fully considered but they are not persuasive.

12. Applicant has amended claim 1 to limit the claim to “marine-species" and then argues that salmon are not considered marine species because they spawn in fresh water (Remarks, p. 6).

13. This argument is contrary to Applicant’s specification, wherein Applicant speaks to the farming of salmonids. Applicant goes on to state that “other marine species have also become an object of the aquaculture industry" (p. 7 lines 1-7). The reference to the “other” marine species, including cod and halibut, indicates that salmon is also considered to be a marine species. Therefore, Applicant’s amendment to the claim does not serve to patentably distinguish their invention over that of the prior art.

14. Regarding the 102 rejection over Breivik, Applicant argues that Breivik does not teach a method of farm-raising marine species (Remarks, p. 6).

15. In response, it is noted that the only step in Applicant's claimed method is "feeding the fish a feed." The feed of claim 7 is patentably indistinct from the feed as taught by Breivik. As the feed of Breivik is specifically taught for use in the aquaculture industry, one of ordinary skill could clearly envisage the method as claimed, comprising feeding the fish food of Breivik to fish. As such, the claims are considered to be anticipated.

16. Regarding the 103 rejection over Breivik with additional evidence provided by Food Day, Applicant argues that Breivik is concerned with unstable pigments, not stabilized oils as is the subject of the instant invention (Remarks, p. 7).

17. Applicant is directed to Breivik p. 3 lines 5-6, wherein "The main object of the invention is to provide a method for stabilizing vegetable and animal oils with regard to oxidation." As detailed above in the 102 rejection of claims 7-12, the instant application treats their oil with the same method as taught by Breivik. The omission of the carotenoids included in the invention of Breivik would have been obvious if one of ordinary skill desired to feed the fish food to white-fleshed fish, like cod or halibut as evidenced by Food Day, where a pink-hued flesh is not desired. As Breivik speaks to the stability of the oils in the fish food, one of ordinary skill would have expected this stability to be maintained regardless of the presence of the carotenoids.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nikki H. Dees
Examiner
Art Unit 1794

/Carol Chaney/
Supervisory Patent Examiner, Art Unit 1794